

2SHB 1095 - S COMM AMD
By Committee on Ways & Means

NOT ADOPTED 04/09/2003

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that chapter 4,
4 Laws of 1999 sp. sess. strongly encouraged the forest practices board
5 to adopt administrative rules that were substantially similar to the
6 recommendations presented to the legislature in the form of the forests
7 and fish report. The rules adopted pursuant to the 1999 legislation
8 require all forest landowners to complete a road maintenance and
9 abandonment plan, and those rules cannot be changed by the forest
10 practices board without either a final order from a court, direct
11 instructions from the legislature, or a recommendation from the
12 adaptive management process. In the time since the enactment of
13 chapter 4, Laws of 1999 sp. sess., it has become clear that both the
14 planning aspect and the implementation aspect of the road maintenance
15 and abandonment plan requirement may cause an unforeseen and unintended
16 disproportionate financial hardship on small forest landowners.

17 (2) The legislature further finds that the commissioner of public
18 lands and the governor have explored solutions that minimize the
19 hardship caused to small forest landowners by the forest road
20 maintenance and abandonment requirements of the forests and fish law,
21 while maintaining protection for public resources. This act represents
22 recommendations stemming from that process.

23 (3) The legislature further finds that it is in the state's
24 interest to help small forest landowners comply with the requirements
25 of the forest practices rules in a way that does not require the
26 landowner to spend unreasonably high and unpredictable amounts of money
27 to complete road maintenance and abandonment plan preparation and
28 implementation. Small forest landowners provide significant wildlife
29 habitat and serve as important buffers between urban development and
30 Washington's public forest land holdings.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 76.09 RCW
2 to read as follows:

3 (1) The state may not require a small forest landowner to invest in
4 upgrades, replacements, or other engineering of a forest road, and any
5 culverts that are a part of the road, that do not threaten public
6 resources or create a barrier to the passage of fish.

7 (2) Participation in the forests and fish agreement provides a
8 benefit to both the landowner in terms of federal assurances, and the
9 public in terms of aquatic habitat preservation and water quality
10 enhancement; therefore, if conditions do threaten public resources or
11 create a barrier to the passage of fish, the road maintenance and
12 abandonment planning process may not require a small forest landowner
13 to take a positive action that will result in high cost without a
14 significant portion of that cost being shared by the public.

15 (3) Some fish barriers are more of a threat to public resources
16 than others; therefore, no small forest landowner should be required to
17 repair a fish barrier until higher priority fish barriers on other
18 lands in the watershed have been repaired.

19 (4) If an existing fish barrier on land owned by a small forest
20 landowner was installed and maintained under an approved forest
21 practices application or notification, and hydraulics approval, and
22 that culvert becomes a high priority for fish passage based on the
23 watershed ranking in section 7 of this act, one hundred percent public
24 funding shall be provided.

25 (5) The preparation of a road maintenance and abandonment plan can
26 require technical expertise that may require large expenditures before
27 the time that the landowner plans to conduct any revenue-generating
28 operations on his or her land; therefore, small forest landowners
29 should be allowed to complete a simplified road maintenance and
30 abandonment plan checklist, that does not require professional
31 engineering or forestry expertise to complete, and that does not need
32 to be submitted until the time that the landowner submits a forest
33 practices application or notification for final or intermediate
34 harvesting, or for salvage of trees. This act is intended to provide
35 an alternate way for small forest landowners to comply with the road
36 maintenance and abandonment plan goals identified in the forest
37 practices rules.

1 **Sec. 3.** RCW 76.09.020 and 2002 c 17 s 1 are each amended to read
2 as follows:

3 (~~For purposes of this chapter:~~) The definitions in this section
4 apply throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Adaptive management" means reliance on scientific methods to
7 test the results of actions taken so that the management and related
8 policy can be changed promptly and appropriately.

9 (2) "Appeals board" means the forest practices appeals board
10 created by RCW 76.09.210.

11 (3) "Aquatic resources" includes water quality, salmon, other
12 species of the vertebrate classes Cephalaspidomorphi and Osteichthyes
13 identified in the forests and fish report, the Columbia torrent
14 salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander
15 (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton*
16 *olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's
17 salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and
18 their respective habitats.

19 (4) "Commissioner" means the commissioner of public lands.

20 (5) "Contiguous" means land adjoining or touching by common corner
21 or otherwise. Land having common ownership divided by a road or other
22 right of way shall be considered contiguous.

23 (6) "Conversion to a use other than commercial timber operation"
24 means a bona fide conversion to an active use which is incompatible
25 with timber growing and as may be defined by forest practices rules.

26 (7) "Department" means the department of natural resources.

27 (8) "Forest land" means all land which is capable of supporting a
28 merchantable stand of timber and is not being actively used for a use
29 which is incompatible with timber growing. Forest land does not
30 include agricultural land that is or was enrolled in the conservation
31 reserve enhancement program by contract if such agricultural land was
32 historically used for agricultural purposes and the landowner intends
33 to continue to use the land for agricultural purposes in the future.
34 As it applies to the operation of the road maintenance and abandonment
35 plan element of the forest practices rules on small forest landowners,
36 the term "forest land" excludes:

37 (a) Residential home sites, which may include up to five acres; and

1 (b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens,
2 and the land on which appurtenances necessary to the production,
3 preparation, or sale of crops, fruit, dairy products, fish, and
4 livestock exist.

5 (9) "Forest landowner" means any person in actual control of forest
6 land, whether such control is based either on legal or equitable title,
7 or on any other interest entitling the holder to sell or otherwise
8 dispose of any or all of the timber on such land in any manner(~~(+~~
9 ~~PROVIDED, That~~)). However, any lessee or other person in possession of
10 forest land without legal or equitable title to such land shall be
11 excluded from the definition of "forest landowner" unless such lessee
12 or other person has the right to sell or otherwise dispose of any or
13 all of the timber located on such forest land.

14 (10) "Forest practice" means any activity conducted on or directly
15 pertaining to forest land and relating to growing, harvesting, or
16 processing timber, including but not limited to:

- 17 (a) Road and trail construction;
- 18 (b) Harvesting, final and intermediate;
- 19 (c) Precommercial thinning;
- 20 (d) Reforestation;
- 21 (e) Fertilization;
- 22 (f) Prevention and suppression of diseases and insects;
- 23 (g) Salvage of trees; and
- 24 (h) Brush control.

25 "Forest practice" shall not include preparatory work such as tree
26 marking, surveying and road flagging, and removal or harvesting of
27 incidental vegetation from forest lands such as berries, ferns,
28 greenery, mistletoe, herbs, mushrooms, and other products which cannot
29 normally be expected to result in damage to forest soils, timber, or
30 public resources.

31 (11) "Forest practices rules" means any rules adopted pursuant to
32 RCW 76.09.040.

33 (12) "Forest road," as it applies to the operation of the road
34 maintenance and abandonment plan element of the forest practices rules
35 on small forest landowners, means a road or road segment that crosses
36 land that meets the definition of forest land, but excludes residential
37 access roads.

1 (13) "Forest trees" does not include hardwood trees cultivated by
2 agricultural methods in growing cycles shorter than fifteen years if
3 the trees were planted on land that was not in forest use immediately
4 before the trees were planted and before the land was prepared for
5 planting the trees. "Forest trees" includes Christmas trees, but does
6 not include Christmas trees that are cultivated by agricultural
7 methods, as that term is defined in RCW 84.33.035.

8 ~~((13))~~ (14) "Forests and fish report" means the forests and fish
9 report to the board dated April 29, 1999.

10 ~~((14))~~ (15) "Application" means the application required pursuant
11 to RCW 76.09.050.

12 ~~((15))~~ (16) "Operator" means any person engaging in forest
13 practices except an employee with wages as his or her sole
14 compensation.

15 ~~((16))~~ (17) "Person" means any individual, partnership, private,
16 public, or municipal corporation, county, the department or other state
17 or local governmental entity, or association of individuals of whatever
18 nature.

19 ~~((17))~~ (18) "Public resources" means water, fish and wildlife,
20 and in addition shall mean capital improvements of the state or its
21 political subdivisions.

22 ~~((18))~~ (19) "Small forest landowner" has the same meaning as
23 defined in section 11 of this act.

24 (20) "Timber" means forest trees, standing or down, of a commercial
25 species, including Christmas trees. However, "timber" does not include
26 Christmas trees that are cultivated by agricultural methods, as that
27 term is defined in RCW 84.33.035.

28 ~~((19))~~ (21) "Timber owner" means any person having all or any
29 part of the legal interest in timber. Where such timber is subject to
30 a contract of sale, "timber owner" shall mean the contract purchaser.

31 ~~((20))~~ (22) "Board" means the forest practices board created in
32 RCW 76.09.030.

33 ~~((21))~~ (23) "Unconfined avulsing channel migration zone" means
34 the area within which the active channel of an unconfined avulsing
35 stream is prone to move and where the movement would result in a
36 potential near-term loss of riparian forest adjacent to the stream.
37 Sizeable islands with productive timber may exist within the zone.

1 (~~(22)~~) (24) "Unconfined avulsing stream" means generally fifth
2 order or larger waters that experience abrupt shifts in channel
3 location, creating a complex flood plain characterized by extensive
4 gravel bars, disturbance species of vegetation of variable age,
5 numerous side channels, wall-based channels, oxbow lakes, and wetland
6 complexes. Many of these streams have dikes and levees that may
7 temporarily or permanently restrict channel movement.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 76.09 RCW
9 to read as follows:

10 (1) The board must amend the forest practices rules relating to
11 road maintenance and abandonment plans that exist on the effective date
12 of this section to reflect the following:

13 (a) A forest landowner who owns a total of eighty acres or less of
14 forest land in Washington is not required to submit a road maintenance
15 and abandonment plan for any block of forest land that is twenty
16 contiguous acres or less in area;

17 (b) A landowner who satisfies the definition of a small forest
18 landowner, but who does not qualify under (a) of this subsection, is
19 only required to submit a checklist road maintenance and abandonment
20 plan with the abbreviated content requirements provided for in
21 subsection (3) of this section, and is not required to comply with
22 annual reporting and review requirements; and

23 (c) Existing forest roads must be maintained only to the extent
24 necessary to prevent damage to public resources.

25 (2) The department must provide a landowner who is either exempted
26 from submitting a road maintenance and abandonment plan under
27 subsection (1)(a) of this section, or who qualifies for a checklist
28 road maintenance and abandonment plan under subsection (1)(b) of this
29 section, with an educational brochure outlining road maintenance
30 standards and requirements. In addition, the department must develop
31 a series of nonmandatory educational workshops on the rules associated
32 with road construction and maintenance.

33 (3)(a) A landowner who qualifies for a checklist road maintenance
34 and abandonment plan under subsection (1)(b) of this section is only
35 required to submit a checklist, designed by the department in
36 consultation with the small forest landowner office advisory committee

1 created in RCW 76.13.110, that confirms that the landowner is applying
2 the checklist criteria to forest roads covered or affected by a forest
3 practices application or notification. When developing the checklist
4 road maintenance and abandonment plan, the department shall ensure that
5 the checklist does not exceed current state law. Nothing in this
6 subsection increases or adds to small forest landowners' duties or
7 responsibilities under any other section of the forest practices rules
8 or any other state law or rule.

9 (b) A landowner who qualifies for the checklist road maintenance
10 and abandonment plan is not required to submit the checklist before the
11 time that he or she submits a forest practices application or
12 notification for final or intermediate harvesting, or for salvage of
13 trees. The department may encourage and accept checklists prior to the
14 time that they are due.

15 (4) The department must monitor the extent of the checklist road
16 maintenance and abandonment plan approach and report its findings to
17 the appropriate committees of the legislature by December 31, 2008, and
18 December 31, 2013.

19 (5) The board shall adopt emergency rules under RCW 34.05.090 by
20 October 31, 2003, to implement this section. The emergency rules shall
21 remain in effect until permanent rules can be adopted. The forest
22 practices rules that relate to road maintenance and abandonment plans
23 shall remain in effect as they existed on the effective date of this
24 section until emergency rules have been adopted under this section.

25 (6) This section is only intended to relate to the board's duties
26 as they relate to the road maintenance and abandonment plan element of
27 the forests and fish report. Nothing in this section alters any forest
28 landowner's duties and responsibilities under any other section of the
29 forest practices rules, or any other state law or rule.

30 **Sec. 5.** RCW 76.09.055 and 2000 c 11 s 4 are each amended to read
31 as follows:

32 (1) The legislature finds that the (~~declines~~) levels of fish
33 stocks throughout much of the state require immediate action to be
34 taken to help (~~restore~~) these fish runs where possible. The
35 legislature also recognizes that federal and state agencies, tribes,
36 county representatives, and private timberland owners have spent

1 considerable effort and time to develop the forests and fish report.
2 Given the agreement of the parties, the legislature believes that the
3 immediate adoption of emergency rules is appropriate in this particular
4 instance. These rules can implement many provisions of the forests and
5 fish report to protect the economic well-being of the state, and to
6 minimize the risk to the state and landowners to legal challenges.
7 This authority is not designed to set any precedents for the forest
8 practices board in future rule making or set any precedents for other
9 rule-making bodies of the state.

10 (2) The forest practices board is authorized to adopt emergency
11 rules amending the forest practices rules with respect to the
12 protection of aquatic resources, in accordance with RCW 34.05.350,
13 except: (a)(i) That the rules adopted under this section may remain in
14 effect until permanent rules are adopted, or until June 30, 2001,
15 whichever is sooner; (ii) that the rules adopted under section 4(5) of
16 this act must remain in effect until permanent rules are adopted; (b)
17 notice of the proposed rules must be published in the Washington State
18 Register as provided in RCW 34.05.320; (c) at least one public hearing
19 must be conducted with an opportunity to provide oral and written
20 comments; and (d) a rule-making file must be maintained as required by
21 RCW 34.05.370. In adopting ~~((the))~~ emergency rules consistent with
22 this section, the board is not required to prepare a small business
23 economic impact statement under chapter 19.85 RCW, prepare a statement
24 indicating whether the rules constitute a significant legislative rule
25 under RCW 34.05.328, prepare a significant legislative rule analysis
26 under RCW 34.05.328, or follow the procedural requirements of the state
27 environmental policy act, chapter 43.21C RCW. Except as provided in
28 section 4 of this act, the forest practices board may only adopt
29 recommendations contained in the forests and fish report as emergency
30 rules under this section.

31 **Sec. 6.** RCW 76.09.390 and 1999 sp.s. c 4 s 707 are each amended to
32 read as follows:

33 (1) Except as provided in subsection (2) of this section, prior to
34 the sale or transfer of land or perpetual timber rights subject to
35 continuing forest land obligations under the forest practices rules
36 adopted under RCW 76.09.370, as specifically identified in the forests

1 and fish report the seller shall notify the buyer of the existence and
2 nature of such a continuing obligation and the buyer shall sign a
3 notice of continuing forest land obligation indicating the buyer's
4 knowledge thereof. The notice shall be on a form prepared by the
5 department and shall be sent to the department by the seller at the
6 time of sale or transfer of the land or perpetual timber rights and
7 retained by the department. If the seller fails to notify the buyer
8 about the continuing forest land obligation, the seller shall pay the
9 buyer's costs related to such continuing forest land obligation,
10 including all legal costs and reasonable attorneys' fees, incurred by
11 the buyer in enforcing the continuing forest land obligation against
12 the seller. Failure by the seller to send the required notice to the
13 department at the time of sale shall be prima facie evidence, in an
14 action by the buyer against the seller for costs related to the
15 continuing forest land obligation, that the seller did not notify the
16 buyer of the continuing forest land obligation prior to sale.

17 (2) Subsection (1) of this section does not apply to checklist road
18 maintenance and abandonment plans created by section 4 of this act.

19 NEW SECTION. Sec. 7. A new section is added to chapter 76.13 RCW
20 to read as follows:

21 (1) The legislature finds that a state-led cost-sharing program is
22 necessary to assist small forest landowners with removing and replacing
23 culverts and other man-made fish barriers that were added to their land
24 prior to the effective date of this section, to help achieve the goals
25 of the forests and fish report, and to assist small forest landowners
26 in complying with the state's fish passage requirements.

27 (2) The small forest landowner office must, in cooperation with the
28 department of fish and wildlife, establish a program designed to assist
29 small forest landowners with repairing or removing fish barriers and
30 assist lead entities in acquiring the data necessary to fill any gaps
31 in fish barrier information. The small forest landowner office and the
32 department of fish and wildlife must work closely with lead entities or
33 other local watershed groups to make maximum use of current information
34 regarding the location and priority of current fish barriers. Where
35 additional barrier inventories are necessary, funding will be sought
36 for the collection of this information. Methods, protocols, and

1 formulas for data gathering and prioritizing must be developed in
2 consultation with the department of fish and wildlife. The department
3 of fish and wildlife must assist in the training and management of
4 barrier location data collection.

5 (3) The small forest landowner office must actively seek out
6 funding for the program authorized in this section. The small forest
7 landowner office must work with consenting landowners to identify and
8 secure funding from local, state, federal, tribal, or nonprofit habitat
9 restoration organizations and other private sources, including the
10 salmon recovery funding board, the United States department of
11 agriculture, the United States department of transportation, the
12 Washington state department of transportation, the United States
13 department of commerce, and the federal highway administration.

14 (4)(a) Except as otherwise provided in this subsection, the small
15 forest landowner office, in implementing the program established in
16 this section, must provide the highest proportion of public funding
17 available for the removal of any fish barrier or culvert replacement.

18 (b) In no case may a small forest landowner be required to pay more
19 than the lesser of either: (i) Twenty-five percent of any costs
20 associated with the removal of a particular fish barrier or the
21 replacement of a particular culvert; or (ii) five thousand dollars for
22 the removal of a particular fish barrier or the replacement of a
23 particular culvert.

24 (c) In no case shall a small forest landowner be required to pay a
25 cumulative total of more than the maximum amount that could be required
26 under (b)(ii) of this subsection: (i) For any individual block of
27 forest land; or (ii) across multiple blocks of forest land owned by the
28 same small forest landowner in any one calendar year. Consistent with
29 this section, the small forest landowner office must prioritize, fund,
30 and complete all projects on land owned by small forest landowners
31 whether or not the landowner has paid the maximum amount required under
32 this subsection.

33 (d) If an existing fish barrier on land owned by a small forest
34 landowner was installed and maintained under an approved forest
35 practices application or notification, and hydraulics approval, and
36 that culvert becomes a high priority for fish passage based on the

1 watershed ranking in section 7 of this act, one hundred percent public
2 funding shall be provided.

3 (5) If a small forest landowner is required to contribute a portion
4 of the funding under the cost-share program established in this
5 section, that landowner may satisfy his or her required proportion by
6 providing either direct monetary contributions or in-kind services to
7 the project. In-kind services may include labor, equipment, materials,
8 and other landowner-provided services determined by the department to
9 have an appropriate value to the removal of a particular fish barrier
10 or the replacement of a particular culvert.

11 (6)(a) The department, using culvert assessments and ranked
12 inventory information provided by the department of fish and wildlife
13 and the appropriate lead entity as delineated in section 10 of this
14 act, must establish a prioritized list for the funding of fish barrier
15 removals on property owned by small forest landowners that ensures that
16 funding is provided first to the known fish barriers existing on forest
17 land owned by small forest landowners that cause the greatest harm to
18 public resources.

19 (b) As the department collects information about the presence of
20 fish barriers from submitted checklists, it must share this information
21 with the department of fish and wildlife and the technical advisory
22 groups established in RCW 77.85.070. If the addition of the
23 information collected in the checklists or any other changes to the
24 scientific instruments described in section 10 of this act alter the
25 analysis conducted under section 10 of this act, the department must
26 alter the funding order appropriately to reflect the new information.

27 (7) The department may accept commitments from small forest
28 landowners that they will participate in the program to remove fish
29 barriers from their land at any time, regardless of the funding order
30 given to the barriers on a particular landowner's property.

31 NEW SECTION. **Sec. 8.** A new section is added to chapter 76.09 RCW
32 to read as follows:

33 Section 7 of this act applies to road maintenance and abandonment
34 plans under this chapter.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 76.09 RCW
2 to read as follows:

3 The department shall not disapprove a forest practices application
4 filed by a small forest landowner on the basis that fish barriers have
5 not been removed or replaced if the small forest landowner filing the
6 application has committed to participate in the program established in
7 section 7 of this act for all fish barriers existing on the block of
8 forest land covered by the forest practices application, and the fish
9 barriers existing on the block of forest land covered by the forest
10 practices application are lower on the funding order list established
11 for the program than the current projects that are capable of being
12 funded by the program.

13 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.12 RCW
14 to read as follows:

15 In coordination with the department of natural resources and lead
16 entity groups, the department must establish a ranked inventory of fish
17 barriers on land owned by small forest landowners based on the
18 principle of fixing the worst first within a watershed consistent with
19 the fish passage priorities of the forest and fish report. The
20 department shall first gather and synthesize all available existing
21 information about the locations and impacts of fish barriers in
22 Washington. This information must include, but not be limited to, the
23 most recently available limiting factors analysis conducted pursuant to
24 RCW 77.85.060(2), the stock status information contained in the
25 department of fish and wildlife salmonid stock inventory (SASSI), the
26 salmon and steelhead habitat inventory and assessment project (SSHIAP),
27 and any comparable science-based assessment when available. The
28 inventory of fish barriers must be kept current and at a minimum be
29 updated by the beginning of each calendar year. Nothing in this
30 section grants the department or others additional right of entry onto
31 private property.

32 NEW SECTION. **Sec. 11.** A new section is added to chapter 76.09 RCW
33 to read as follows:

34 For the purposes of this chapter and sections 7 and 10 of this act,
35 "small forest landowner" means an owner of forest land who, at the time

1 of submission of required documentation to the department, has
2 harvested from his or her own lands in this state no more than an
3 average timber volume of two million board feet per year during the
4 three years prior to submitting documentation to the department and who
5 certifies that he or she does not expect to harvest from his or her own
6 lands in the state more than an average timber volume of two million
7 board feet per year during the ten years following the submission of
8 documentation to the department. However, any landowner who exceeded
9 the two million board feet annual average timber harvest threshold from
10 their land in the three years prior to submitting documentation to the
11 department, or who expects to exceed the threshold during any of the
12 following ten years, shall still be deemed a "small forest landowner"
13 if he or she establishes to the department's reasonable satisfaction
14 that the harvest limits were, or will be, exceeded in order to raise
15 funds to pay estate taxes or for an equally compelling and unexpected
16 obligation, such as for a court-ordered judgment or for extraordinary
17 medical expenses.

18 NEW SECTION. **Sec. 12.** The existing policy committees of the
19 senate and house of representatives that deal with natural resources
20 issues must review and study the implementation of this act, including
21 checklist preparation and the meaning of both defined and undefined
22 words in chapters 76.09 and 76.13 RCW, and report to the legislature by
23 January 2004.

24 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately."

2SHB 1095 - S COMM AMD
By Committee on Ways & Means

NOT ADOPTED 04/09/2003

28 On page 1, line 3 of the title, after "rules;" strike the remainder

1 of the title and insert "amending RCW 76.09.020, 76.09.055, and
2 76.09.390; adding new sections to chapter 76.09 RCW; adding a new
3 section to chapter 76.13 RCW; adding a new section to chapter 77.12
4 RCW; creating new sections; and declaring an emergency."

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